

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION**

KIMBERLY ELLIS,

Plaintiff,

v.

JUNE BENSON DAILEY,

Defendant.

CIVIL ACTION NO.
3:17-cv-

NOTICE OF REMOVAL

COMES NOW the United States of America, by and through Michael Billingsley, Acting United States Attorney for the Northern District of Alabama, and Jack Hood, Assistant U.S. Attorney, and gives notice of removal of the above-captioned civil action pursuant to 28 U.S.C. §§ 1442(a)(1) and 2679(d)(2), and shows as follows:

1. June Benson Dailey (Dailey), an employee of the United States of America's federal agency, the U.S. Postal Service, is named as Defendant in the above-captioned civil action now pending in the District Court of Lauderdale County, Alabama, in Civil Action No. 41-SM-2017-900071.00 (Exhibit 1). The action was filed on or about January 21, 2017, and has not yet gone to trial.

2. The United States of America and its agency, the U.S. Postal Service, has filed simultaneous to this Notice an Application for Substitution and Order that it be named as the proper party defendant in this action, pursuant to the Federal Employees Liability Reform and Tort Compensation Act of 1988 §§ 5, 6, Pub. L. No. 100-694, 102 Stat. 4563 (1988) (codified at 28 U.S.C. § 2679).

3. The United States has not waived sovereign immunity to permit any alleged cause of action or civil proceeding by Plaintiff to be commenced in state court. Further, no such action would be proper in federal court because the federal subject matter jurisdictional prerequisites for the exhaustion of administrative remedies under 28 U.S.C. § 2675(a) for suits against the United States have not been met and sovereign immunity has not been waived in this respect.

4. Under 28 U.S.C. § 1442, actions commenced in state court against federal officers or agencies can be removed to federal district court for proper disposition. *See City of Jacksonville v. Department of Navy*, 348 F. 3rd 1307, 1310-1311 (11th Cir. 2003) (28 U.S.C. § 1442(a)(1) authorizes removal by the United States and its agencies to assert sovereign immunity).

5. Federal law governs the outcome of this lawsuit because Plaintiff has filed what is viewed as a tort action against the United States of America, which is governed by the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b)(1) and 2671 *et seq.* The Federal Tort Claims Act, at 28 U.S.C. § 2679(a), provides that a suit

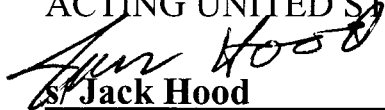
against the United States shall be the exclusive remedy for person with tort claim against any federal agency, including the U.S. Postal Service. The United States is the sole and proper defendant in such a case. 28 U.S.C. § 2679(a) and (b)(1).

6. The Defendant United States of America, on behalf of its agency, the U.S. Postal Service, files herewith copies of the Summons and Complaint (Exhibit 1) in Kimberly Ellis v. June Benson Dailey, Civil Action No. 41-SM-2017-900071.00 (Lauderdale County, Alabama, District Court), which is all that it has received by way of process, pleadings, or orders to date.

WHEREFORE, the aforesaid action is hereby removed from the District Court of Lauderdale County, Alabama to the U.S. District Court for the Northern District of Alabama, Northwestern Division.

Respectfully submitted,

MICHAEL BILLINGSLEY,
ACTING UNITED STATES ATTORNEY


s/ Jack Hood

Jack Hood
Assistant United States Attorney
U.S. Attorney's Office
State Bar No. D41J
1801 Fourth Avenue North
Birmingham, Alabama 35203
(205) 244-2103
(205) 244-2181 (fax)
jack.hood@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2017, I filed the foregoing with the Clerk of Court and served same by Federal Express of such filing to:

Basil Timothy Case, Esq.
Attorney for Plaintiff
408 West Dr. Hicks Blvd.
Florence, AL 35630
256/ 740-0488
256/ 740-0487 (Fax)
westjess0488@gmail.com

A handwritten signature in black ink, appearing to read "Jack Hood", is written over a horizontal line.

Jack Hood
Jack Hood
Assistant United States Attorney

EXHIBIT A

DOCUMENT 1

ELECTRONICALLY FILED
1/23/2017 4:25 PM
41-SM-2017-900071.00
CIRCUIT COURT OF
LAUDERDALE COUNTY, ALABAMA
MISSY ROMAN, CLERK

IN THE DISTRICT COURT OF LAUDERDALE COUNTY, ALABAMA

KIMBERLY ELLIS, an individual,
residing at 526 Campbell Street,
Florence, Lauderdale County,
Alabama, 35630.

Plaintiff,

vs.

CASE NO.: _____

JUNE BENSON DAILEY, an individual,
residing at 382 Shoals Avenue,
Killen, Lauderdale County, Alabama, 35645,
and fictitious defendants
A, B, and C, those persons, associations,
corporations, entities, and/or firms
responsible for and who or which
committed the acts and/or omissions
according to the allegations set forth in
plaintiff's complaint; all of whose true
names are otherwise unknown at this
time, but will be identified, substituted,
and added by amendment when
ascertained,

Defendants.

COMPLAINT

COMES NOW, the plaintiff, Kim Ellis, and files herewith her Complaint as more
specifically set out hereinbelow:

1. Plaintiff, Kimberly Ellis, as the owner of a 1993 Nissan Pathfinder, hereby
demands of the defendant, June Benson Dailey, for property damages sustained to the
1993 Nissan Pathfinder which was being driven by her son, Bradley Ellis, as the result
of the negligence and/or recklessness and/or carelessness of June Benson Dailey, a

DOCUMENT 2

United States Postal Service Employee, on or about January 23, 2015, when she caused her automobile, which she was driving on Chaperral Drive, in Florence, Lauderdale County, Alabama, to collide with the automobile being driven by Bradley Ellis, to wit, a 1993 Nissan Pathfinder

2. This Nissan Pathfinder was and is owned by Kimberly Ellis, your plaintiff
3. Thus, the plaintiff demands of the defendant, June Benson Dailey, property damages sustained to the automobile and for diminishment of value and loss of use.
4. Fictitious defendants, A, B, and C, those persons, associations, corporations, entities, and/or firms who or which are responsible for the acts and/or omissions alleged herein in this complaint are unknown to the plaintiff at this time but will be identified, substituted, and added by amendment when ascertained.

WHEREFORE, THE PREMISES CONSIDERED, the plaintiff, Kimberly Ellis, respectfully requests this Honorable Court to award compensatory damages, court costs, and any other relief this Honorable Court deems just and appropriate under the circumstances.

Respectfully submitted,

s/Tim Case

Tim Case

NOTICE TO THE CLERK:

Please serve the defendants via certified mail, return receipt requested:

**June Benson Dailey
382 Shoals Avenue
Killen, Alabama 35645**

State of Alabama
 Unified Judicial System
 Form SM-7 Rev. 6/07

**SMALL CLAIMS
 SUMMONS**

Case Number:

41-541-2017-905071.00

IN THE SMALL CLAIMS COURT OF

LAUDERDALE

ALABAMA

KIMBERLY ELLIS V JUNE BENSON DAILEY

Plaintiff

Defendant

Plaintiff's
 Home Address:
KIMBERLY ELLIS
526 CAMPBELL STREET
FLORENCE, AL 35630

Defendant's
 Home Address:
JUNE BENSON DAILEY
320 SHAW BLVD
WETUM, AL 35630

Plaintiff's Attorney's (if applicable)
 Address:

BASIL TIMOTHY CASE
408 West Dr. Hicks Blvd
Florence, AL 35630

TO THE ABOVE NAMED DEFENDANT:

The Statement of Claim (Complaint) which is attached to this summons is important and you must take immediate action to protect your rights. You or your attorney are required to mail or hand deliver a copy of a written answer either admitting or denying each allegation in the Statement of Claim (Complaint) to the plaintiff's attorney(s) shown above or in the attached document. Fill out the enclosed answer form and deliver or mail it to the court clerk.

This answer must be mailed or delivered within 14 days after this summons and Statement of Claim (Complaint) were delivered to you or a judgment by default may be entered against you for the money or other things demanded in the Statement of Claim (Complaint). You must also file the original of your answer with the clerk of this court.

INSTRUCTIONS TO SHERIFF OR PROCESS SERVER

- ☐ To any sheriff or any person authorized by Rule 4 of the Alabama Rules of Civil Procedure: You are hereby commanded to serve this summons and a copy of the Statement of Claim (Complaint) in this action upon defendant(s).
- ☒ This service by certified mail of this summons is initiated upon the written request of **KIMBERLY ELLIS**

1/23/2017 4:25:46 PM
 Date

is MISSY Homan

Clerk
 Clerk Address:

200 SOUTH COURT STREET
FLORENCE, AL 35630

RETURN ON SERVICE:

- ☐ Certified mail return receipt in this office on (Date) _____ (Return Receipt hereto attached)
- ☐ I certify that I personally delivered a copy of the summons and Statement of Claim (Complaint) to

in _____, Alabama on (Date) _____
 (Name of County)

Date

Server Address

Server's Telephone Number

Server Signature

Title of Process Server

Server Email